

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (hereinafter referred to as "Agreement"), effective this _____ day of _____, _____ is made by the Georgia Department of Community Health (hereinafter referred to as "DCH") for the purpose of defining the permissible use of certain information provided to _____ (hereinafter referred to as "Receiving Party"); such information being Medicaid claims data made a part of the DCH Request for Information for Medicaid Reform (hereinafter referred to as "RFI").

WHEREAS, DCH is required by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), to ensure the permissible use of certain information that may contain data that would deem the information to be considered Protected Health Information ("PHI");

WHEREAS, Receiving Party must comply with all lawful requirements involving the use of PHI;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCH and Receiving Party (each individually a "Party" and collectively the "Parties") hereby agree as follows:

1. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, published as the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Parts 160 and 164 ("Privacy Rule");
2. Except as limited in this Agreement, Receiving Party may use or disclose PHI only to extent necessary to meet its responsibilities as set forth in the RFI provided that such use or disclosure would not violate the Privacy Rule if done by DCH.
3. **Unless otherwise Required by Law, Receiving Party agrees:**
 - A. That it will not request, create, receive, use or disclose PHI other than as permitted or required by this Agreement or as required by law.
 - B. To establish, maintain and use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
 - C. To mitigate, to the extent practicable, any harmful effect that is known to Receiving Party of a use or disclosure of PHI by Receiving Party in violation of the requirements of this Agreement.
 - D. That its agents or subcontractors are subject to the same obligations that apply to Receiving Party under this Agreement and Receiving Party agrees to ensure that its agents or subcontractors comply with the conditions, restrictions,

prohibitions and other limitations regarding the request for, creation, receipt, use or disclosure of PHI, that are applicable to Receiving Party under this Agreement.

- E.** To report to DCH any use or disclosure of PHI that is not provided for by this Agreement of which it becomes aware. Receiving Party agrees to make such report to DCH in writing in such form as DCH may require within twenty-four (24) hours after Receiving Party becomes aware.
- F.** To give DCH, the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) or their designees access to Receiving Party’s books and records and policies, practices or procedures relating to the use and disclosure of PHI for or on behalf of DCH within five (5) business days after DCH, the Secretary or their designees request such access or otherwise as DCH, the Secretary or their designees may require. Receiving Party also agrees to make such information available for review, inspection and copying by DCH, the Secretary or their designees during normal business hours at the location or locations where such information is maintained or to otherwise provide such information to DCH, the Secretary or their designees in such form, format or manner as DCH, the Secretary or their designees may require.
- G.** To document all disclosures of PHI and information related to such disclosures as would be required for DCH to respond to a request by an Individual or by the Secretary for an accounting of disclosures of PHI in accordance with the requirements of the Privacy Rule.
- H.** To provide to DCH or to an Individual, information collected in accordance with Section 3. I. of this Agreement, above, to permit DCH to respond to a request by an Individual for an accounting of disclosures of PHI as provided in the Privacy Rule.

4. Unless otherwise Required by Law, DCH agrees:

- A.** That it will notify Receiving Party of any new limitation in DCH’s Notice of Privacy Practices in accordance with the provisions of the Privacy Rule if, and to the extent that, DCH determines in the exercise of its sole discretion that such limitation will affect Receiving Party’s use or disclosure of PHI
- B.** That it will notify Receiving Party of any change in, or revocation of, permission by an Individual for DCH to use or disclose PHI to the extent that DCH determines in the exercise of its sole discretion that such change or revocation will affect Receiving Party’s use or disclosure of PHI.

C. That it will notify Receiving Party of any restriction regarding its use or disclosure of PHI that DCH has agreed to in accordance with the Privacy Rule if, and to the extent that, DCH determines in the exercise of its sole discretion that such restriction will affect Receiving Party's use or disclosure of PHI.

5. The **Term of this Agreement** shall be effective as of _____, and shall terminate when all of the PHI provided by DCH to Receiving Party, or created or received by Receiving Party on behalf of DCH, is destroyed or returned to DCH, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

A. Termination for Cause. Upon DCH's knowledge of a material breach by Receiving Party, DCH shall either:

- (1) Provide an opportunity for Receiving Party to cure the breach or end the violation, and terminate this Agreement if Receiving Party does not cure the breach or end the violation within the time specified by DCH;
- (2) Immediately terminate this Agreement if Receiving Party has breached a material term of this Agreement and cure is not possible; or
- (3) If neither termination nor cure is feasible, DCH shall report the violation to the Secretary.

B. Effect of Termination.

- (1) Except as provided in paragraph (A.) (2) of this Section, upon termination of this Agreement, for any reason, Receiving Party shall return or destroy all PHI received from DCH, or created or received by Receiving Party on behalf of DCH. This provision shall apply to PHI that is in the possession of subcontractors or agents of Receiving Party. Neither Receiving Party nor its agents nor subcontractors shall retain copies of the PHI.
- (2) In the event that Receiving Party determines that returning or destroying the PHI is not feasible, Receiving Party shall send DCH detailed written notice of the specific reasons why it believes such return or destruction not feasible and the factual basis for such determination, including the existence of any conditions or circumstances which make such return or disclosure infeasible. If DCH determines, in the exercise of its sole discretion, that the return or destruction of such PHI is not feasible, Receiving Party agrees that it will limit its further use or disclosure of PHI only to those purposes DCH may, in the exercise of its sole discretion, deem to be in the public interest

or necessary for the protection of such PHI, and will take such additional action as DCH may require for the protection of patient privacy or the safeguarding, security and protection of such PHI.

- (3) If neither termination nor cure is feasible, DCH shall report the violation to the Secretary.
- (4) Section 5. B. of this Agreement, regarding the effect of termination or expiration, shall survive the termination of this Agreement.

- 6. **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit DCH to comply with applicable Medicaid laws, rules and regulations, and the Privacy Rule, and any rules, regulations, requirements, rulings, interpretations, procedures or other actions related thereto that are promulgated, issued or taken by or on behalf of the Secretary; provided that applicable Medicaid laws, rules and regulations and the laws of the State of Georgia shall supercede the Privacy Rule if, and to the extent that, they impose additional requirements, have requirements that are more stringent than or have been interpreted to provide greater protection of patient privacy or the security or safeguarding of PHI than those of HIPAA and its Privacy Rule.
- 7. All other terms and conditions contained in the RFI and any amendment thereto, not amended by this Agreement, shall remain in full force and effect.

[The following Page is the Signature Page]

IN WITNESS WHEREOF, Receiving Party, through their authorized officers and agents, have caused this Agreement to be executed on their behalf as of the date indicated.

RECEIVING PARTY NAME

BY: _____

[If Receiving Party is a Corporation, use the signature block below.]

RECEIVING PARTY NAME

BY: _____
SIGNATURE

TITLE

AFFIX CORPORATE SEAL HERE
(Corporations without a seal, attach a
Certificate of Corporate Resolution)

ATTEST: _____
SIGNATURE

TITLE
